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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1962

No. 716

ELIAS THIBODEAUX, ET AL,
Petitioners,

versus

P. FRANK COMEAUX, JR., ET AL,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana.

[redacted].

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HAUSER PRINTING CO., INC., NEW ORLEANS

SUBJECT INDEX

Petition	PAGE
Opinions Reported	1
Jurisdictional Statement	2
Question Presented	2
Constitutional Provisions Involved	3
Statement of The Case	3
Argument	6
Opinions And Judgments of Courts Below	10

Appendix

Opinion, Fourteenth Judicial District Court	1
Opinion on Motion for New Trial	14
Judgment, Fourteenth Judicial District Court	15
Opinion, Supreme Court of Louisiana	16
Opinion on Application for Rehearing	37

TABLE OF AUTHORITIES

Constitution, Amendments V and XIV	3
28 U.S.C.A., Section 1257(3)	2
Crampton vs. Zabriskie, 101 U.S. 601, 25 L. Ed. 1070	7
Myles Salt Co. vs. Iberia Drainage District, 239 U.S. 478, 36 S. Ct. 204, 205, 206, 60 L. Ed. 392	7
Village of Norwood vs. Baker, 172 U.S. 269, 19 S. Ct. 187	8
Wight vs. Police Jury, 264 F. 705	7, 8

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, ELIAS THIBODEAUX, ET AL, plaintiffs, and OLIN MATHIESON CHEMICAL CORPORATION, PAN AMERICAN PETROLEUM CORPORATION and CITIES SERVICE REFINING CORPORATION, intervenors, respectfully show:

I.

OPINIONS REPORTED

The opinion of the Supreme Court of Louisiana and said Court's per curiam on denial of the application for rehearing are found in the Appendix, beginning at Pages 16 and 37, respectively, and are reported in 145 So. 2d Reporter, beginning at Pages 1 and 11, respectively.

II.

JURISDICTIONAL STATEMENT

(a) The judgment to be reviewed was rendered by the Supreme Court of Louisiana on June 29, 1962. Its time of entry is October 3, 1962, when it became final upon denial of rehearing.

(b) Petitioners' application for rehearing was denied by the Louisiana Supreme Court on October 3, 1962 (145 So. 2d 11).

(c) Jurisdiction to review the judgment in question is conferred upon this Court by the provisions of 28 U.S.C.A., Section 1257 (3), providing that:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

III.

QUESTION PRESENTED

The question presented for review is whether the action of defendants in proposing a capital expenditure and maintenance levy exceeding any reasonable need by 100%, and to cost intervenors herein approximately

$110,000.00 (including interest on bonds) more on capital outlay and $5000.00 more per year on maintenance than necessary to provide adequate recreational facilities for the respondent district, constitutes a gross abuse of power and a taking of property without due process of law, and without just compensation.

IV.

CONSTITUTIONAL PROVISIONS INVOLVED

The issues here involve the due process clauses of the Constitution of the United States providing (a) in Amendment V (USCA, Constitution, Amendments 1-5, Pages 297, 432, 698) that "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation," and (b) in Amendment XIV, Section 1 (USCA, Constitution, Amendments 6-14, Pages 288, 383) that " * * * nor shall any State deprive any person of life, liberty, or property, without due process of law."

V.

STATEMENT OF THE CASE

(a) By this suit, thirty-seven plaintiffs, all being resident taxpayers of the purported Hackberry Recreation District of Cameron Parish, Louisiana, and three intervening non-resident corporate taxpayers attack the validity of an election held on September 17, 1960 at the call of the defendants acting as the Board of Commissioners of said district and the action of defendants in connection therewith, and, in addition, seek to enjoin defendants from issuing the bonds and levying the taxes thereby purportedly authorized for the purpose of providing and maintaining recreational facilities for the district.

(b) As one of the grounds for the relief sought, petitioners alleged in Articles 7 and 8 of their petition (Record, Page 16), that:

"7.

"Petitioners show further that the indebtedness of $290,000.00 sought to be incurred by the defendants for capital needs in connection with the establishment of recreational facilities for the Hackberry area, and the amount that would be produced by the proposed 4-mill maintenance tax are grossly in excess of the amount needed to provide adequate facilities and maintenance necessary to meet recreational needs in said area.

"8.

"The issuance of the aforesaid bond issue by defendants and the collection of any tax for the payment thereof, or for the maintenance of said project, under the above described unauthorized and defective election would accordingly be in contravention to law, and would amount to the taking and use of plaintiff's property without due process of law, all in violation of the equal protection and due process clauses of the United States Constitution, and particularly the Fifth and Fourteenth Amendments thereof • • • ."

The constitutional question so raised was urged throughout the proceedings (with abuse of power as an incidental point) and was decided in respondents' favor by both the Trial Court (Appendix, Page 12) and the Supreme Court (Appendix, Page 35, 45 So. 2d 1, 9, 10). In reaching this decision, the Supreme Court (Appendix, Page 35) adopted and quoted the ruling of the Trial Court, as follows:

"The preponderance of evidence on the subject is in favor of the plaintiffs' position that the amounts which the district proposes to spend for

> the recreation facilities and the maintenance and operation tax are greater than the need when compared with the recreational facilities of other communities. However, this Court cannot say that there is no room for a difference of opinion in this regard, or that the project is so costly that the action taken amounts to a gross abuse of the authority granted by law to the district."

(c) Though shown to have almost unlimited natural facilities for swimming, boating and hunting (Record 417), the Hackberry Recreation District, with a population of only 1180, proposes for recreation a capital expenditure of $290,000.00 and a 4-mill maintenance levy which, on the basis of 1960 assessments (Record 139-145, Exhibit PD-1), will produce $18,400.00 per year.

We find nearby Westlake providing greater but less elaborate facilities for 7100 people (R. 246) for a capital outlay of approximately $125,000.00 (R. 246-249) and an annual maintenance and operation cost of $5,682.74; and Moss Bluff in the same area furnishing substantially equal facilities for approximately 3,000 people at a capital expenditure of $145,000.00 and operating cost of about $6,000.00 per year (R. 207, 208). In addition, it was shown that the standard outlays for like recreational needs recommended by the National Recreation Association were $6.00 per capita for capital investment and $6.00 per capita per year for maintenance and operation (R. 235).

A newspaper advertisement run by defendants in promoting the project stated that 95% of the proposed expenditures would be paid by non-resident and corporate taxpayers, who, of course, had no voice in the matter (R. 151, Exhibit P-3); and stipulated assessment figures (R. 139-141, Exhibit PD-1) reveal that 55% of the total expenditures will be paid by intervenors herein.

VI.

ARGUMENT

Here the state courts have decided a federal question contrary to applicable decisions of this Honorable Court.

The defendants propose to spend approximately $290,000.00 for construction of recreational facilities to serve a community of only 1180 people, including approximately 300 school children. Non-resident and corporate owners, not permitted to vote in such matters, would pay 95% of the cost and resident property owners, who could vote, would pay only 5%. This unique situation was publicized by defendants, employing newspaper advertisements. The cost of retiring the twenty-year bonds at 4% interest would be approximately $20,300.00 per year, and the 4-mill maintenance tax would total about $18,400.00, based on present assessments. The total annual cost of $38,700.00 for the next twenty years would amount to $129.00 for each school child each year, or $32.80 for each person each year; a total of $774,000.00 for recreational facilities for 1180 people.

Comparable and adequate recreational facilities for similar communities with much larger populations were constructed for one half or less the proposed expenditure, and are operated at an annual cost of one third the proposed operating cost here contested.

The facilities proposed to be built and operated are recreational facilities in the community of Hackberry, but the taxing district purports to cover all of Ward 6 of Cameron Parish, in which ward Hackberry is located. There appears to be no conceivable way in which anyone other than the 1180 residents will benefit by the construction and operation of such elaborate recreational facil-

ities. Certainly, no benefit, direct or indirect, is seen for non-resident individual or corporate property owners.

It would appear certain that adequate recreational facilities for the small community could be constructed and operated for so much less as to make the proposals grossly excessive on their face. Such plans, greatly exceeding the needs, are arbitrary, unjust and unreasonable, and constitute both gross abuse of power and a taking of private property without due process of law.

Such unjust action by a governmental subdivision must be restrained if the due process requirements of the Constitution are to have meaning. We suggest that the cases of *Village of Norwood vs. Baker*, 172 U.S. 269, 19 S. Ct. 187, *Wight vs. Police Jury*, 264 F. 705, *Crampton vs. Zabriskie*, 101 U.S. 601, 25 L. Ed. 1070, and *Myles Salt Co. vs. Iberia Drainage District*, 239 U.S. 478, 36 S. Ct. 204, 205, 206, 60 L. Ed. 392, illustrate the intention of the courts to give meaning and life to the constitutional protection provided by the due process clauses.

The *Myles Salt Co.* case involved the creating of a drainage district and the levy of taxes for drainage purposes. In its opinion, the Supreme Court reasoned:

> " * * * It is true the law of the state as written is not attacked, **but the law as administered and justified by the supreme court of the state is attacked,** and it is asserted to be a violation of the Constitution of the United States. The question presented is Federal and the motion to dismiss is denied.
>
> * * * * *
>
> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be

benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner vs. Leser, supra.* We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others,—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind." (Emphasis ours)

The Court of Appeals, Fifth Circuit, following the lead of the Supreme Court in the *Myles Salt Co.* case, in its opinion in the *Wight vs. Police Jury* case, stated:

> "It is conceived, however, that any subdivision of the state might be territorially so defined that protection would have to be given against arbitrary, unreasonable, and confiscatory action. While the relief would usually be against local boards, action by a State Legislature might demand relief from the courts. All of the rules which have been announced with reference to districts of any kind recognize the possibility of unjust, unreasonable, arbitrary action. The Courts, while going far to sustain action creating districts and levying and making assessment, nevertheless give efficient life to the constitutional provision which prohibits the taking of private property without due process of law."

In *Norwood vs. Baker*, which in effect followed *Crampton vs. Zabriskie*, the court, in decreeing an excessive public improvement assessment to be invalid, held that:

> "There is a point beyond which the legislative department, even when exerting the power of tax-

> ation, may not go, consistently with the citizen's right of property. * * * 'In our judgment, the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, **a taking, under the guise of taxation, of private property for the public use without compensation."** (Emphasis ours)

The records shows that only 1180 live in the ward and all except a very few live in the community of Hackberry, thus the name of "Hackberry Recreation Commission." The bulk of the area in the ward and parish is marsh or swamp. Because of its unusual topography, it remains one of the few areas in the state never completely surveyed on the ground. The people to be served by the proposed facilities are the residents of the community of Hackberry.

The authorities could have established a reasonable district around the community and proposed facilities adequate for their needs. Instead, they attempted to put the entire ward in the district, including uninhabited marsh and swamp lands remote from Hackberry, and proposed grand plans far in excess of the needs of the people. The reasoning of the authorities is quite clear; such plans would result in elaborate recreational facilities for Hackberry, with the local residents paying only five cents on each dollar expended and the unbenefited non-resident and corporate taxpayers paying the remaining 95 cents. Unquestionably, these plans are so grossly excessive of needs and so manifestly unfair as to constitute gross abuse of power and a taking of private property without due process of law.

As already shown, the proposed levies would cost the taxpayers approximately $38,700.00 per year for the next

twenty years, or a total of $774,000.00. The 55% to be paid by intervenors, alone, during that period would amount to $425,000.00, at least one-half of which ($212,250.00) would represent excessive expenditures over and above any reasonable need in providing adequate recreation facilities for the Hackberry area. Surely these facts present a situation going far beyond the point at which the line must be drawn in granting the protection afforded by the due process clauses (*Norwood vs. Baker, Supra*) to prevent the squandering proposed by defendants at the expense principally of taxpayers having no voice whatever in the determination of the excessive levies proposed against them.

VII.

OPINION AND JUDGMENTS OF COURTS BELOW

(a) The opinions of the Fourteenth Judicial District Court of Louisiana are shown in the Appendix, beginning at Pages 1 and 14, respectively. The opinion of the Supreme Court of Louisiana and said Court's per curiam on denial of the application for rehearing are found in the Appendix, beginning at Pages 16 and 37, respectively, and in 145 So. 2d Reporter, beginning at Pages 1 and 11, respectively.

(b) The decree of the Supreme Court of Louisiana on the issue here presented is included in its opinion and will be found in the Appendix, at Pages 35, 36. The formal judgment of the Trial Court is included in the Appendix, at Page 15.

WHEREFORE, your petitioners PRAY that a writ of certiorari issue to the Supreme Court of the State of Louisiana, to the end that the errors aforesaid may be

corrected by this Honorable Court.

Dated December 21, 1962.

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